

Key Messages on Oregon Coastal Nonpoint Source Program under CZARA

General:

- Based on NOAA and EPA's settlement agreement with the Northwest Environmental Advocates, we need to announce our intent to approve or disapprove Oregon's Coastal Nonpoint Program (CNP) by Nov. 15, 2013.
- NOAA and EPA recognize the complexities and political challenges Oregon faces in addressing the remaining conditions on its Coastal Nonpoint Program.
- Based on our preliminary review of material submitted to us July 1, EPA and NOAA program staff Oregon's Coastal Nonpoint Program recommend disapproval of Oregon's CNP. When proposing approval or disapproval, NOAA/EPA must provide a 90 day public comment. The settlement agreement requires NOAA/EPA to publish the final decision by May 15, 2014.
- In its July 1st and July 15th submittals, Oregon showed progress towards improving its CNP in some areas and strengthening NOAA/EPA's rationales for its interim condition approvals. However, Oregon's submittal still has significant gaps in the three remaining conditions, which leave EPA and NOAA unable to approve Oregon's CNP. The staff recommendation is to move forward with an intent to disapprove the program by November 15, 2013.
- Though NOAA and EPA staff recommend issuing an intent to disapprove by November 15, 2013, NOAA and EPA hope Oregon will be able to address major deficiencies of Oregon's Coastal Nonpoint Program so we do not need to issue a final disapproval of Oregon's CNP and withhold funding for the state's Clean Water Act Section 319 and Coastal Zone Management Act Section 306 Program (as CZARA requires) next spring.

What is Needed to Approve a CNPCP That Relies on Voluntary or Incentive-Based Approaches

- All three remaining conditions—New Development, On-Site Disposal Systems (OSDS), and Additional Management Measures for Forestry—rely on voluntary or incentive-based approaches, but do not provide the necessary enforceable policies and mechanisms required by CZARA.
- CZARA requires enforceable policies and mechanisms for states that rely on voluntary or incentive based approaches as long as they are backed by existing state enforcement authorities and include:
 - A description of voluntary or incentive based programs including methods for tracking and evaluating these programs.
 - A legal opinion stating that enforcement of state authorities can be used to prevent NPS and require management measure implementation, as necessary.
 - Description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary.

Forestry

- To address the remaining condition requiring additional management measures for forestry, Oregon needs to:
 - better protect medium, small, and non-fish bearing streams
 - better protect high-risk landslide areas
 - address the impacts of road density and maintenance, particularly legacy roads, more effectively; and
 - ensure adequate stream buffers for the application of certain chemicals.

Pros of the Submittal

- Better description of processes to protect medium and small streams
- Good characterization of road density
- Description of land use laws and benefits to water quality for keeping forestry land use in place versus conversion to urban lands

Required Elements Insufficiently Addressed

- Oregon's submittal describes the current rule-making effort to address medium and small fish-bearing streams. However, the rule-making is not final, and therefore, EPA/NOAA cannot determine whether the final rule is sufficient to protect stream and fish health.
- The submittal does not address non-fish bearing streams, and the current rule-making does not address non-fish bearing streams.
- The submittal does not address stream buffers for the applications of certain chemicals.

Potential Remedies

OSDS:

- We are disappointed to hear Oregon will no longer be pursuing a rule change to require point of sale inspections. While Oregon could use a voluntary approach to address this CZARA requirement, it can be challenging and only a few other states have successfully done so. Outside of a rule change Oregon needs to have one of the following in place:

Required Elements Insufficiently Addressed

- Oregon's submittal does not include a monitoring and tracking element with its voluntary approach, which is against CNPCP guidance for approval when a state relies on a voluntary approach

Potential Remedies

- Outside of a rule change Oregon needs to:
 - Include a monitoring and tracking element in its program in conjunction with the proposed voluntary approach.
 - demonstrate that counties in the coastal nonpoint management area have ordinances requiring regular inspections or pump-outs of existing residential OSDS such that 90% of residential OSDS are inspected or pumped out over the next 15 years;
 - demonstrate that those lending institutions that account for 90% of loans for homes served by OSDS in the coastal nonpoint management area require an OSDS inspection by a qualified inspector; or

- demonstrate that through a variety of state, local, and voluntary programs (including dedicated funding to support voluntary OSDS inspection programs) the state will reach 90% of the existing systems within the coastal nonpoint management area within 15 yrs. Tracking and evaluation are required for strategies that rely on voluntary approaches.

New Development:

- Oregon is addressing this condition through its Urban/Rural TMDL Implementation Plan Guidance.

Required Elements Insufficiently Addressed

In order for this to be a successful approach, Oregon needed to and failed to finalize the guidance. Although Oregon revised the draft guidance to address some of EPA/NOAA's comments, Oregon failed to address any of the points listed below.

- *Potential Remedies*
 - Finalize guidance.
 - Ensure the guidance provides *unambiguous* instruction to the DMAs that practices consistent with the new development measure need to be incorporated into their TMDL Implementation Plans (i.e., practices that will reduce post-development TSS loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volunteer to pre-development levels);
 - Clarify that ODEQ does have the authority to require implementation of the new development measures, as necessary, and stated in the September 23, 2005, attorney general's opinion and ensure that there is no ambiguous language about this in the Implementation Guidance; and
 - Develop a process/schedule for training/educating DMAs about the new guidance to ensure that they will include practices consistent with the CZARA new development measure in their TMDL Implementation Plans.

Other Considerations:

- We also need to keep in mind that while NOAA and EPA may have given Oregon interim approval for its other conditions, including agriculture, those preliminary decisions are not final and have not gone out for public comment. While EPA and NOAA have given Oregon preliminary approval on its CZARA agriculture measures, this decision is not final and has not gone out for public comment yet so Oregon may still need to strengthen its management of agriculture nonpoint source pollution too.

- **Ex. 5 - Deliberative**
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